

REMARKS

Claims 1-3, 5-9, 23 and 25-39 are currently pending. Claims 4, 10-22, and 24 were canceled without prejudice. Claims 31-39 were newly added. Claims 1-3, 5-7, 9, 23, and 25-30 were amended. No new matter was added. Support for the amendments may be found in at least paragraphs 17, 27, 29, and 30-34 of the specification.

35 U.S.C. § 102 Rejections

Claims 1-9, 13-19, 23-24 and 27 were rejected as being anticipated under 35 U.S.C. § 102(e) by U.S. Patent Publication No. 2003/0026440 A1 by Lazzeroni et al. ("Lazzeroni"). However, Lazzeroni fails to describe all of the elements in Claims 1-3, 5-9, 23 and 27. Claims 4, 13-19 and 24 were canceled rendering their rejections moot.

Claims 1-3 and 5-9

Among others, Lazzeroni fails to describe the limitation in amended Claim 1 "where [a] level detector determines an average gain signal as a function of [an] entertainment audio signal; and where the signal processor adjusts a level of [a] telematics audio signal to [a] seatback speaker as a function of the average gain signal." (Emphasis Applicant's) As noted in the Office Action, Lazzeroni fails to describe a "level detector to adjust the level of the telematics audio signal as a function of noise." (Office Action, p. 8.) Thus, Lazzeroni certainly fails to describe a level detector where the level detector determines an average gain signal as a function of an entertainment audio signal.

As another example, Lazzeroni fails to describe the limitation in Claim 1 of "a seatback speaker, the seatback speaker coupled to a seat of a vehicle." (Emphasis

Applicant's) Instead, Lazzeroni describes "helmet headsets" and "any other speakers on [a] motorcycle, such as faring[sic] speakers." (¶¶ [0006] and [0043].)

Lazzeroni also fails to describe the limitation "where telematics audio from [a] seatback speaker is directed to a first listener position in [a] seat, entertainment audio from [a] vehicle speaker is directed to the first listener position and a second listener position located elsewhere in [a] vehicle, and the telematics audio from the seatback speaker and the entertainment audio from the vehicle speaker are produced in a common listener space within the vehicle." (Emphasis Applicant's) Sounds produced by the "helmet headsets" in Lazzeroni may be heard by the wearers of the helmet headsets. However, Lazzeroni fails to describe where telematics audio from a seatback speaker and entertainment audio from a vehicle speaker are produced in a common listener space within a vehicle.

The system described in Lazzeroni includes a "push-to-talk" switch that may be mounted on the handlebars of a motorcycle. (¶[0094].) When "the switch is actuated," the system "allows the user to speak via the microphone of a headset into a radio or cell phone," taking "priority over" other audio devices. (*Id.*) When the switch is actuated, "signals from the accessories are turned off and the mute is turned on." (¶ [0103].) If the intercom or the cell phone is activated, then the respective signal from the intercom or cell phone "is used instead of the music signal." (¶¶ [0105] and [0106].) (Emphasis Applicant's) Although the radar detector signal "is provided only to the left channel[,] ... it overrides all other accessories." (¶ [0105]; See FIG. 6.) Even if all other accessories were not overridden, sounds produced by a headset speaker connected to the right channel would only be heard by a wearer of the headset. Therefore, Lazzeroni fails to describe all of the limitations of Claim 1.

Claims 2-3 and 5-9 depend from Claim 1 and therefore include the limitations of Claim 1. Consequently, Lazzeroni fails to describe all of the limitations of Claims 1-3 and 5-9.

Claim 23

Among others, Lazzeroni fails to describe the limitation in amended Claim 23 of "adjusting a level of [a] telematics audio signal to [a] seatback speaker as a function of [an] entertainment audio signal." (Emphasis Applicant's) As noted in the Office Action, Lazzeroni fails to describe "receiving a vibration signal from an accelerometer positioned in a vehicle ... and adjusting a level of the telematics audio signal to the seatback speaker as a function of the gain signal." (Office Action, p. 10.) Thus, Lazzeroni certainly fails to describe adjusting a level of a telematics audio signal to a seatback speaker as a function of an entertainment audio signal.

As another example, Lazzeroni fails to describe the limitation in Claim 23 of "providing the telematics audio signal to a seatback speaker ... where the seatback speaker is coupled to a seat." (Emphasis Applicant's) Instead, Lazzeroni describes "helmet headsets" and "any other speakers on [a] motorcycle, such as faring[sic] speakers." (¶¶ [0006] and [0043].)

Lazzeroni also fails to describe the limitation "where telematics audio produced by [a] seatback speaker and entertainment audio produced by [a] vehicle speaker are produced in a common listener space." (Emphasis Applicant's) As described above, sounds produced by the "helmet headsets" in Lazzeroni may certainly be heard by the wearers of the helmet headsets. However, Lazzeroni fails to describe a method where telematics audio produced by a seatback speaker and entertainment audio produced by a vehicle speaker are produced in a common listener space. Therefore, Lazzeroni fails to describe all of the limitations of Claim 23.

Claim 27

Among others, Lazzeroni fails to describe the limitation in amended Claim 27 of "where the signal processor is also configured to adjust an amplitude of [a] telematics audio signal transmitted to a seatback speaker, where adjustment of the amplitude is

Amendment and Response filed May 13, 2008

based on the entertainment audio signal." (Emphasis Applicant's) Lazzeroni is silent on adjustment of an amplitude of a telematics audio signal transmitted to a seatback speaker. Thus, Lazzeroni fails to describe a signal processor, where the signal processor is configured to adjust an amplitude of a telematics audio signal transmitted to the seatback speaker, where adjustment of the amplitude is based on the entertainment audio signal.

As another example, Lazzeroni fails to describe the limitation in Claim 27 of "a seatback speaker ... where the seatback speaker is coupled to a seat of a vehicle." (Emphasis Applicant's) Instead, Lazzeroni describes "helmet headsets" and "any other speakers on [a] motorcycle, such as faring[sic] speakers." (¶¶ [0006] and [0043].)

As yet another example, Lazzeroni also fails to describe the limitation in Claim 27 "where telematics audio produced by [a] seatback speaker and entertainment audio produced by a vehicle speaker are both produced in a common listener space within [a] vehicle." (Emphasis Applicant's) As described above, sounds produced by the "helmet headsets" in Lazzeroni may certainly be heard by the wearers of the helmet headsets. However Lazzeroni fails to describe where telematics audio produced by a seatback speaker and entertainment audio produced by a vehicle speaker are both produced in a common listener space within a vehicle. Therefore, Lazzeroni fails to describe all of the limitations of Claim 27.

For at least the foregoing reasons, Lazzeroni fails to describe all of the limitations of Claims 1-3, 5-9, 23 and 27. Therefore, Applicant respectfully requests withdrawal of the 35 U.S.C. § 102(e) rejection of Claims 1-3, 5-9, 23 and 27.

35 U.S.C. § 103 Rejections

Claims 10-12, 20-22, 25-26 and 28-30 were rejected as being obvious under 35 U.S.C. § 103 over Lazzeroni in view of US Patent No. 5,844,992 to Boyer ("Boyer"). Claims 10-12 and 20-22 were canceled rendering their respective rejections moot.

Lazzeroni and Boyer, either separately or in combination, do not teach or suggest all of the recited limitations of Claims 25-26 and 28-30.

Claims 25-26 depend from, and include all of the limitations of, Claim 23. As discussed above, Lazzeroni fails to describe all of the limitations of amended Claim 23. Boyer also fails to describe the missing limitations.

For example, Boyer fails to describe the limitation in amended Claim 23 of "adjusting a level of [a] telematics audio signal to [a] seatback speaker as a function of [an] entertainment audio signal." (Emphasis Applicant's). Instead, Boyer adjusts a useful sound signal based on ambient noise that excludes a useful sound signal. Boyer describes a "sensor 12 which picks up ... ambient sounds." (Col. 3, lines 54-55.) (Emphasis Applicant's) The sensor may be a "a microphone, ... a speed detector, [or] a detector of vibrations, ..." (Col. 3, lines 58-59.) The sensor, if a microphone, may pick up "ambient sounds including ... the sounds from the [a] sound transmission member 6." (Col. 3, lines 54-56.) A first signal S1 is supplied by the sensor. (Col. 3, line 60.) A second signal S2 "only includes the useful sound signal." (Col. 4, lines 16-17.) The control device then uses the S2 signal to "eliminate the signal S2 from the signal S1 for obtaining an object measurement of noise and ambient sounds." (Col. 4, lines 20-22.) (Emphasis Applicant's) Thus, Boyer teaches away from adjusting a level of a telematics audio signal to a seatback speaker as a function of an entertainment audio signal.

Also, Boyer fails to describe, as is asserted on page 10 of the Office action, the limitation of Claim 25 of "an accelerometer." Instead, Boyer describes a "speed detector." (Col. 3, line 58.) A "speed detector" is not an accelerometer. For at least the foregoing reasons, Lazzeroni and Boyer, separately or in combination, fail to teach or suggest the limitations of Claims 25-26.

Claims 28-30 depend from, and include all of the limitations of, Claim 27. As discussed above, Lazzeroni fails to describe all of the limitations of amended Claim 27. Boyer also fails to describe the missing limitations.

For example, Boyer fails to describe the limitation of Claim 27 "where [a] signal processor is ... configured to increase an amplitude of [a] telematics audio signal transmitted to [a] seatback speaker, where the amplitude is based on [an] entertainment audio signal." (Emphasis Applicant's) Instead, as discussed above, Boyer adjusts a useful sound signal based on ambient noise that excludes the useful sound signal.

Also, Boyer fails to describe, as is asserted on page 12 of the Office action, the limitation of Claim 29 of "an accelerometer." Instead, Boyer describes a "speed detector." (Col. 3, line 58.) A "speed detector" is not an accelerometer.

For at least the foregoing reasons, neither Lazzeroni nor Boyer, alone or in combination, describe all of the limitations of the rejected claims. The assertion on Page 7 of the Office Action that the claimed invention would have been obvious to a person of ordinary skill in the art by combining Lazzeroni and Boyer, fails to establish a *prima facie* of obviousness.

In order to establish a *prima facie* case of obviousness under 35 U.S.C 103(a), factual inquiries must be made according to *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). MPEP §2141(II). The requirement to make these factual inquiries was recently affirmed by the Supreme Court in *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1391 (2007). Among these factual inquiries, "the scope and content of the prior art must be determined." *Graham*, 383 U.S. at ___, 148 USPQ at 467; See MPEP §2141(II.A.). There is a burden of "factually supporting" any *prima facie* case of obviousness. MPEP §2142. Consequently, any determination of scope and content of the prior art must be factually supported.

As explained above, all of the claim limitations included in amended Claims 25-26 and 28-30 are not described in Lazzeroni and/or Boyer. Consequently, an assertion that the claim limitations are independently known in the prior art is factually unsupported.

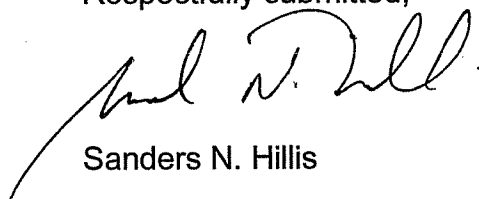
Additionally, an invention comprising a combination of known elements allegedly found in prior art "is not proved obvious merely by demonstrating that each element

was, independently, known in the prior art." *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007). A successful combination of known elements which the prior art teaches away from combining is likely nonobvious. *Id.* at 1740.

As explained above, Boyer teaches away from combining the two references. Thus, even if it could be demonstrated that Lazzeroni and Boyer together described all of the claim limitations included in the rejected claims, it would not be obvious to combine both references. Accordingly, Applicant respectfully requests the Examiner to withdraw the 35 U.S.C. § 103 rejections of Claims 25-26 and 28-30.

The Applicant believes that the presently pending claims of this application are allowable and respectfully requests the Examiner to issue a Notice of Allowance for this application. Should a telephone conference be deemed beneficial in expediting allowance/examination of this application, the Examiner is invited to call the undersigned attorney at the telephone number listed below.

Respectfully submitted,



Sanders N. Hillis

Attorney Reg. No. 45,712

Attorney for Applicant

SNH/MEH/sev

BRINKS HOFER GILSON & LIONE

CUSTOMER NO. 27879

Telephone: 317-636-0886

Facsimile: 317-634-6701